IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
Mark G. Meyer et. al.)	Examiner: Robert E. Pezzuto
)	
Serial No: 10/612,307)	Art Unit: 3714
)	
Filed: July 2, 2003)	Confirmation No.: 4054
)	
Title: Lottery Game Method)	Deposit Acct. No: 04-1403
)	
_____)	Client ID: 22827

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Applicants respectfully submit the enclosed Appeal Brief pursuant to 37

C.F.R. 41.37(c) and request that the final rejection of claims 1-42 be reversed and that

the application be remanded to the Examiner for allowance.

I.   **REAL PARTY IN INTEREST**

The assignee Scientific Games International Inc. is the real party in interest.

II.   **RELATED APPEALS AND INTERFERENCES**

Applicants, Applicants' legal representative, and assignee have no knowledge of other appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. **STATUS OF CLAIMS**

Claims 1-42 are pending. Claims 1-42 stand rejected. Applicants appeal the final rejection of claims 1-42.

IV.   **STATUS OF AMENDMENTS**

The Applicants filed an amendment after final on July 19, 2007 that did not amend any pending claims and only contained arguments to overcome the rejections. The August 20, 2007 Advisory Action indicated that the amendment would not be entered.

V.   **SUMMARY OF CLAIMED SUBJECT MATER**

The present invention describes and claims a method and apparatus for playing a lottery game.

The embodiment of the invention recited in independent claim 1 defines a gaming method. The method includes receiving player symbol data (*see* p. 2 lines 14-26; p. 20 line 27 – p. 21 line 2; Fig. 9, item 412) indicative of a plurality of sets of player symbols associated with a player for a single play of a game (*see* p. 2 lines 14-26; p. 11 lines 22-30; p.12 lines 8-26; p. 13 lines 4-17; p. 22 lines 10-17; Fig. 6, items 304 and 308; Fig. 7, items 354, 358, 362, 366 and 370; Fig. 9, item 412; Fig. 10, items 354, 358,

362, 366, 370, and 504). Each player symbol is selected from a plurality of symbols (*see* p. 2 lines 14-26; p.12 lines 14-26; p. 21 line16 – p. 22 line 9; Fig. 5, item 208). The method includes receiving an indication that the player submitted a wager associated with the plurality of sets of player symbols for a single play (*see* p. 2 lines 14-26; p. 11 line 31 – p. 12 line 7; Fig. 5, item 204). The method further includes receiving winning symbol data indicative of a set of winning symbols from the plurality of possible symbols (see p. 2 lines 14-26; p. 13 line 26 – p.14 line 3; p. 22 line 25 – p. 23 line 5; Fig. 5, item 212). A value payout is determined based on the respective numbers of winning symbols in respective sets of player symbols (*see* p. 2 lines 14-26; p. 14 lines 4-8; Fig. 5, item 216). For at least some value payouts, the value payout for winning a plurality of sets on the single play is different than a sum of a plurality of individual payouts for winning each set individually (*see* p. 2 lines 14-26; p. 14 line 4 – p. 20 line 8), where an individual payout is based on the respective number of winning symbols in the corresponding set of player symbols (*see* p. 2 lines 14-26; p. 14 lines 4-18). The method transmits player payout data indicative of the value payout (*see* p. 2 lines 14-26; p. 20 line 9-10; Fig. 5, item 220).

The embodiment of the invention recited in independent claim 30 defines a game server which includes a controller (*see* p. 2 line 27 – p. 3 line 10; p. 10 lines 6-19; Fig. 4, items 44 and 150) that is operatively connected to a network (*see* p. 2 line 27 – p. 3 line 10; p. 7 lines 16-32). The controller includes a microprocessor and a memory operatively coupled to the microprocessor (*see* p. 2 line 27 – p. 3 line 10; p. 10 lines 7-24; Fig. 4, items 152, 154, and 156). The controller is configured to receive player symbol data, via the network (*see* p. 2 line 27 – p. 3 line 10; p. 20 line 27 – p. 21 line 2;

Fig. 9, item 412). The player symbol data is indicative of a plurality of sets of player symbols associated with a player for a single play of a game (*see* p. 2 line 27 – p. 3 line 10; p. 11 lines 22-30; p.12 lines 8-26; p. 13 lines 4-17; p. 22 lines 10-17; Fig. 6, items 304 and 308; Fig. 7, items 354, 358, 362, 366 and 370; Fig. 9, item 412; Fig. 10, items 354, 358, 362, 366, 370, and 504). Each player symbol is selected from a plurality of possible symbols (*see* p. 2 line 27 – p. 3 line 10; p. 12 lines 14-26; p. 21 line 16 – p. 22 line 9; Fig. 5, item 208). The controller is also configured to receive, via the network, an indication that the player has submitted a wager for a plurality of sets of player symbols in a single play (*see* p. 2 line 27 – p. 3 line 10; p. 11 line 31 – p. 12 line 7). The controller is additionally configured to receive winning symbol data indicative of a set of winning symbols from the plurality of possible symbols (*see* p. 2 line 27 – p. 3 line 10; p. 20 lines 20-26; Fig. 9, item 404). The controller is further configured to determine a value payout based on respective numbers of winning symbols in respective sets of player symbols (*see* p. 2 line 27 – p. 3 line 10; p. 21 lines 3-7; Fig. 9, item 416). For at least some value payouts, the value payout for winning a plurality of sets on the single play is different than a sum of a plurality of individual payouts for winning each set individually (*see* p. 2 line 27 – p. 3 line 10; p. 14 line 4 – p. 20 line 8), where an individual payout is based on the respective number of winning symbols in the corresponding set of player symbols (*see* p. 2 line 27 – p. 3 line 10; p. 14 lines 4-18). The controller is configured to transmit, via the network, player payout data indicative of the value payout (*see* p. 2 line 27 – p. 3 line 10; p. 21 lines 3-7; Fig. 9, item 420).

The embodiment of the invention recited in independent claim 35 defines a method of gaming including the step of receiving a wager for a plurality of sets of player

symbols in a single play of a game (*see* p. 3 lines 11-21; p. 11 line 31 – p. 12 line 7; Fig. 5, item 204) and determining a plurality of sets of player symbols associated with the player for a single play (*see* p. 3 lines 11-21; p. 11 lines 22-30; p.12 lines 8-26; p. 13 lines 4-17; p. 22 lines 10-17; Fig. 6, items 304 and 308; Fig. 7, items 354, 358, 362, 366 and 370; Fig. 9, item 412; Fig. 10, items 354, 358, 362, 366, 370, and 504). Each player symbol is selected from a plurality of player symbols (*see* p. 3 lines 11-21; p. 12 lines 14-26; p. 21 line 16 – p. 22 line 9; Fig. 5, item 208). The method includes selecting a set of winning symbols from the plurality of possible symbols (*see* p. 3 lines 11-21; p. 13 line 26 – p.14 line 3; p. 22 line 25 – p. 23 line 5; Fig. 5, item 212). The method additionally includes determining a value payout based on the respective numbers of winning symbols in respective sets of player symbols (*see* p. 3 lines 11-21; p. 14 lines 4-8; Fig. 5, item 216). For at least some value payouts, the value payout for winning a plurality of sets on the single play is different than a sum of a plurality of individual payouts for winning each set individually (*see* p. 3 lines 11-21; p. 14 line 4 to p. 20 line 8), where an individual payout is based on the respective number of winning symbols in the corresponding set of player symbols (*see* p. 3 lines 11-21; p. 14 lines 4-18). The method includes the step of providing the value payout, if any, to the player (*see* p. 3 lines 11-21; p. 20 lines 9-10; Fig. 5, item 220).

The embodiment of the invention recited in independent claim 39 defines a gaming method including receiving a wager from a player (*see* p. 3 lines 22-32; p. 11 line 31 – p. 12 line 7; Fig. 5, item 204) and determining a plurality of sets of player symbols associated with the player in a single play of a game (*see* p. 3 lines 22-32; p. 11 lines 22-30; p.12 lines 8-26; p. 13 lines 4-17; p. 22 lines 10-17; Fig. 6, items 304 and

308; Fig. 7, items 354, 358, 362, 366 and 370; Fig. 9, item 412; Fig. 10, item 354, 358, 362, 366, 370, and 504). Each player symbol is selected from a plurality of possible symbols (*see* p. 3 lines 22-32; p. 12 lines 14-26; p. 21 line 16 – p. 22 line 9; Fig. 5, item 208). The method includes determining a value payout based on the respective numbers of winning symbols in respective sets of player symbols (*see* p. 3 lines 22-32; p. 14 lines 4-8; Fig. 5, item 216). The winning symbols are from a set of winning symbols from the plurality of possible symbols (*see* p. 3 lines 22-32; p. 13 line 26 – p.14 line 3; p. 22 line 25 – p. 23 line 5; Fig. 5, item 212). For at least some value payouts, the value payout for winning a plurality of sets on the single play is different than a sum of a plurality of individual payouts for winning each set individually (*see* p. 3 lines 22-32; p. 14 line 4 to p. 20 line 8), where an individual payout is based on the respective number of winning symbols in the corresponding set of player symbols (*see* p. 3 lines 22-32; p. 14 lines 4-18). The method further includes the step of providing the value payout, if any, to the player (*see* p. 3 lines 22-32; p. 20 lines 9-10; Fig. 5, item 220).

The embodiment of the invention recited in independent claim 42 defines a gaming apparatus that includes a value input device (*see* p. 4 lines 1-15; p. 24 line 15 – p. 26 line 29; Fig. 12; Fig. 14) and a controller (*see* p. 4 lines 1-15; p. 26 line 30 – p. 27 line 10; Fig. 13, item 700) operatively connected to a network and to the value input device (*see* p. 4 lines 1-15; p. 23 lines 8-29; p. 27 lines 17-32; Fig. 11, item 624; Fig. 13, item 708). The controller includes a microprocessor and a memory operatively coupled to the microprocessor (*see* p. 4 lines 1-15; p. 26 line 30 – p. 27 line 16; Fig. 13, items 702, and 704). The controller is configured to determine a wager for a plurality of sets of player symbols for a single play of a game has been received from a player via the

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value input device (*see* p. 4 lines 1-15; p. 11 line 31 – p.12 line 7; p. 24 lines 26-33), and to determine a plurality of sets of player symbols associated with the player for the single play (*see* p. 4 lines 1-15; p. 11 lines 22-30; p.12 lines 8-26; p. 13 lines 4-17; p. 22 lines 10-17; Fig. 6, items 304 and 308; Fig. 7, items 354, 358, 362, 366, and 370; Fig. 9, item 412; Fig. 10, item 354, 358, 362, 366, 370, and 504). Each player symbol is selected from a plurality of possible symbols (*see* p. 4 lines 1-15; p. 12 lines 14-26; p. 21 line 16 – p. 22 line 9; Fig. 5, item 208). The controller is further configured to determine a value payout based on respective numbers of winning symbols in respective sets of player symbols (*see* p. 4 lines 1-15; p. 14 lines 4-8; Fig. 5, item 216). The winning symbols are from a set of winning symbols from the plurality of possible symbols (*see* p. 4 lines 1-15; p. 13 line 26 – p.14 line 3; p. 22 line 25 – p. 23 line 5; Fig. 5, item 212). For at least some value payouts, the value payout for winning a plurality of sets on the single play is different than a sum of a plurality of individual payouts for winning each set individually (*see* p. 4 lines 1-15; p. 14 line 4 to p. 20 line 8), where an individual payout is based on the respective number of winning symbols in the corresponding set of player symbols (*see* p. 4 lines 1-15; p. 14 lines 4-18]). The controller is configured to provide the value pay out, if any, to the player (*see* p. 4 lines 1-15; p. 20 lines 9-10; Fig. 5, item 220).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Whether claims 1-12, 14-16, and 18-42 are patentable under 35 U.S.C. 103(a) over www.powerball.com (Powerball) in view of U.S. Patent 6,497,408 (Walker '408).

B. Whether claims 13 and 17 are patentable under 35 U.S.C. 103(a) over www.powerball.com (Powerball) in view of U.S. Patent 6,497,408 (Walker '408), yet in further view of Frequently Asked Questions about Keno (FAQK).

VII. ARGUMENT

A. Claims 1-12, 14-16, and 18-42 are patentable under 35 U.S.C. 103(a) over www.powerball.com (Powerball) in view of U.S. Patent 6,497,408 (Walker '408)

1. Claims 1-12, 14-16, 18-29 are patentable under 35 U.S.C. 103(a) over www.powerball.com (Powerball) in view of U.S. Patent 6,497,408 (Walker '408)

Applicants respectfully traverse the rejection of claims 1-12, 14-16, and 18-29 under 35 U.S.C. 103(a) over Powerball in view of Walker '408 for at least the reason that Powerball does not disclose or teach each and every element of independent claim 1, and Walker '408 fails to cure such deficiencies. Specifically, independent claim 1 recites a method for playing a lottery game comprising receiving player symbol data indicative of a plurality of sets of player symbols associated with a player for a single play of a game. The method requires determining a value payout based on respective numbers of winning symbols in respective sets of player symbols. The value payout for winning a plurality of sets on a single play is different than the sum of the individual payouts for winning each set individually.

To illustrate an embodiment of the present invention, consider an example in which a player picks a plurality of sets of player symbols on a single play consisting of Set A and Set B. Consider further that the individual value payout if Set A contains a

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winning set is $5 and the individual value payout if Set B contains a winning set is $5. The payout according to the present invention for winning both Set A and Set B on a single play is different than $10, which is the sum of the individual payouts for winning each set individually. For example, the value payout according to the present invention for winning Set A and Set B could be $50 (see p. 14 lines 9-18).

In contrast to the present invention, Powerball teaches a value payout for winning a plurality of player sets on a single play that is equal to the sum of individual value payouts for winning each player set individually. To illustrate, consider the example in which a player purchases two entries in a game of Powerball consisting of Entry A and Entry B. Suppose Entry A consists of one match and the occurrence of a powerball. The payout for winning Entry A individually consists of $4 (see Powerball Table 1). Suppose Entry B consists of two matches and the occurrence of a powerball. The payout for winning Entry B consists of $7 (see Powerball Table 1). The total payout for winning both Entry A and Entry B (the plurality of player sets) in a single game would be $11, which is equal to the sum of winning Entry A and Entry B individually. Thus, Powerball fails to teach a method in which the payout for winning a plurality of player sets on a single play is different than the sum of individual payouts for winning each set individually.

Walker '408 fails to correct the deficiencies of Powerball. Walker '408 teaches a system and method for conducting and playing a separate, supplemental lottery game that allows the player to qualify for an award if the player fails to win in the primary lottery game or if the player fails to reach a certain threshold of winning in the primary lottery game (Walker '408, col. 3, l. 5-8). Walker '408 merely provides a backup lottery

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game for receiving a value payout that arises when all of the sets played are losers or below a threshold of winning. In that situation, the player may receive another value payout from a completely separate meta-game. This value payout is not based on winning a plurality of sets on a single play, but rather on losing a plurality of sets on a single play in a primary lottery game, and qualifying for a different value payout on a second play in a separate, supplemental meta-game.

Walker '408 teaches situations in which the value payout specifically for the separate meta-game is different than the sum of a plurality of individual payouts for winning each set individually in the primary lottery game (see Walker '408, col.9, l. 39-43; Fig. 3). However, Walker '408 fails to disclose a value payout for winning a plurality of sets on a single play that is different than the sum of a plurality of individual payouts for winning each set individually. As discussed above, Walker '408 discloses two distinct lottery games. Specifically, embodiments of Walker '408 "provide a system and method by which players participating in a primary lottery drawing may elect to participate in a second, or derivative lottery drawing." (Walker 408, col. 2, l. 66 to col. 3. l. 2). In fact, to be eligible to play in the separate, supplement meta-game, a player must register separately for the meta-game (see Walker '408, col. 3, l. 9-13). According to Walker '408, a player may win a value payout in the separate meta-game that is different than the value payout in the primary lottery game. However, to win this different value payout, a player must participate a second time in the second, supplemental meta-game. Thus, Walker '408 fails to teach a value payout for winning a plurality of sets on a single play that is different than the sum of a plurality of individual payouts for winning each set individually. For these reasons, Applicants respectfully

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assert that the combination of Powerball and Walker '408 fails to disclose each limitation recited in claim 1.

Moreover, Applicants respectfully assert that Walker '408 teaches away from a value payout for winning a plurality of player sets on a single play that is different than the sum of a plurality of individual payouts for winning each set individually. The Federal Circuit has several times expressly addressed the issue of how to evaluate an alleged case of prima facie obviousness to determine whether it has been properly made. For instance, "a prima facie case of obviousness can be rebutted if the applicant can show that the art in any material respect taught away from the claimed invention." *In re Haruna*, 249 F.3d 1327,1335 (Fed. Cir. 2001). A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant. *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994).

As discussed above, Walker '408 teaches a value payout in a separate meta-game that is based on losing or failing to reach a certain threshold of winning a plurality of sets in the primary lottery game. In fact, the odds of the plurality of player sets qualifying for a value payout in the separate meta-game are inversely proportional to the odds of the plurality of player sets winning an award in the primary lottery game (*see* Walker '408, col. 8, I. 35-41). A prior art reference that discloses a game that requires losing multiple player sets in a primary lottery game in order to win a value payout in a separate, supplemental meta-game expressly teaches away from a gaming method that requires determining a value payout for winning a plurality of player sets on a single

play that is different from the sum of value payouts for <u>winning</u> each player set individually.

Therefore, Applicants respectfully request withdrawal of the 35 U.S.C. 103(a) rejection of independent claim 1 based on the combination of Powerball and Walker '408. Inasmuch as claims 2-12, 14-16, 18-29 depend from independent claim 1 and include further limitations not recited in claim 1, Applicants respectfully assert that claims 2-12, 14-16, 18-29 are similarly patentable over the combination of Powerball and Walker '408.

2.   Claims 30-34 are patentable under 35 U.S.C. 103(a) over www.powerball.com (Powerball) in view of U.S. Patent 6,497,408 (Walker '408)

Applicants respectfully traverse the rejection of claims 30-34 under 35 U.S.C. 103(a) over Powerball in view of Walker '408 for at least the reason that Powerball does not disclose or teach each and every element of independent claim 30, and Walker '408 fails to cure such deficiencies. Specifically, independent claim 30 recites a gaming apparatus that includes a controller configured for receiving player symbol data via the network indicative of a plurality of sets of player symbols associated with a player for a <u>single play</u> of a game. The controller is further configured to determine a value payout based on respective numbers of winning symbols in respective sets of player symbols. The value payout for winning a plurality of sets on a single play <u>is different</u> than the sum of the individual payouts for winning each set individually.

As discussed above, Powerball teaches a value payout for winning a plurality of player sets on a single play that is <u>equal to</u> the sum of individual value payouts for winning each player set individually. To illustrate, consider the example in which a

player purchases two entries in a game of Powerball consisting of Entry A and Entry B. Suppose Entry A consists of one match and the occurrence of a powerball. The payout for winning Entry A individually consists of $4 (see Powerball Table 1). Suppose Entry B consists of two matches and the occurrence of a powerball. The payout for winning Entry B consists of $7 (see Powerball Table 1). The total payout for winning both Entry A and Entry B (the plurality of player sets) in a single game would be $11, which is equal to the sum of winning Entry A and Entry B individually. Thus, Powerball fails to teach a gaming apparatus configured to determine a value payout for winning a plurality of player sets on a single play that is different than the sum of individual payouts for winning each set individually.

Walker '408 fails to correct the deficiencies of Powerball. Walker '408 teaches a system and method for conducting and playing a separate, supplemental lottery game that allows the player to qualify for an award if the player fails to win in the primary lottery game or if the player fails to reach a certain threshold of winning in the primary lottery game (Walker '408, col. 3, l. 5-8). Walker '408 merely provides a backup lottery game for receiving a value payout that arises when all of the sets played are losers or below a threshold of winning. In that situation, the player may receive another value payout from a completely separate meta-game. This value payout is not based on winning a plurality of sets on a single play, but rather on losing a plurality of sets on a single play in a primary lottery game, and qualifying for a different value payout on a second play in a separate, supplemental meta-game.

Walker '408 teaches situations in which the value payout specifically for the separate meta-game is different than the sum of a plurality of individual payouts for

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winning each set individually <u>in the primary lottery game</u> (*see* Walker '408, col.9, l. 39-43; Fig. 3). However, Walker '408 fails to disclose a value payout for winning a plurality of sets <u>on a single play</u> that is different than the sum of a plurality of individual payouts for winning each set individually. As discussed above, Walker '408 discloses two distinct lottery games. Specifically, embodiments of Walker '408 "provide a system and method by which players participating in a primary lottery drawing <u>may elect to participate in a second, or derivative lottery drawing</u>." (Walker 408, col. 2, l. 66 to col. 3. l. 2). In fact, to be eligible to play in the separate, supplement meta-game, a player must register separately for the meta-game. (Walker '408, col. 3, l. 9-13). According to Walker '408, a player may win a value payout <u>in the separate meta-game</u> that is different than the value payout <u>in the primary lottery game</u>. However, to win this different value payout, a player must participate a second time in the second, supplemental meta-game. Thus, Walker '408 fails to teach a value payout for winning a plurality of sets <u>on a single play</u> that is different than the sum of a plurality of individual payouts for winning each set individually. For these reasons, Applicants respectfully assert that the combination of Powerball and Walker '408 fails to disclose each limitation recited in claim 30.

Moreover, Applicants respectfully assert that Walker '408 <u>teaches away</u> from a value payout for <u>winning a plurality of player sets on a single play</u> that is different than the sum of a plurality of individual payouts for winning each set individually. As discussed above, Walker '408 teaches a value payout in a separate meta-game that is based on <u>losing</u> or <u>failing to reach a certain threshold of winning</u> a plurality of sets in the primary lottery game. In fact, the odds of the plurality of player sets qualifying for a

value payout in the separate meta-game are inversely proportional to the odds of the plurality of player sets winning an award in the primary lottery game (see Walker '408, col. 8, l. 35-41). A prior art reference that discloses a game that requires losing multiple player sets in a primary lottery game in order to win a value payout in a separate, supplemental meta-game expressly teaches away from a gaming apparatus that is configured for determining a value payout for winning a plurality of player sets on a single play that is different from the sum of value payouts for winning each player set individually.

Therefore, Applicants respectfully request withdrawal of the 35 U.S.C. 103(a) rejection of independent claim 30 based on the combination of Powerball and Walker '408. Inasmuch as claims 31-34 depend from independent claim 30 and include further limitations not recited in claim 30, Applicants respectfully assert that claims 31-34 are similarly patentable over the combination of Powerball and Walker '408.

3.   Claims 35-38 are patentable under 35 U.S.C. 103(a) over
www.powerball.com (Powerball) in view of U.S. Patent 6,497,408
(Walker '408)

Applicants respectfully traverse the rejection of claims 35-38 under 35 U.S.C. 103(a) over Powerball in view of Walker '408 for at least the reason that Powerball does not disclose or teach each and every element of independent claim 35, and Walker '408 fails to cure such deficiencies. Specifically, independent claim 35 recites a method for playing a lottery game comprising determining a plurality of sets of player symbols associated with a player for a single play of a game. The method requires determining a value payout based on respective numbers of winning symbols in respective sets of

player symbols. The value payout for winning a plurality of sets on a single play is different than the sum of the individual payouts for winning each set individually.

As discussed above, Powerball teaches a value payout for winning a plurality of player sets on a single play that is equal to the sum of individual value payouts for winning each player set individually. To illustrate, consider the example in which a player purchases two entries in a game of Powerball consisting of Entry A and Entry B. Suppose Entry A consists of one match and the occurrence of a powerball. The payout for winning Entry A individually consists of $4 (see Powerball Table 1). Suppose Entry B consists of two matches and the occurrence of a powerball. The payout for winning Entry B consists of $7 (see Powerball Table 1). The total payout for winning both Entry A and Entry B (the plurality of player sets) in a single game would be $11, which is equal to the sum of winning Entry A and Entry B individually. Thus, Powerball fails to teach a method in which the payout for winning a plurality of player sets on a single play is different than the sum of individual payouts for winning each set individually.

Walker '408 fails to correct the deficiencies of Powerball. Walker '408 teaches a system and method for conducting and playing a separate, supplemental lottery game that allows the player to qualify for an award if the player fails to win in the primary lottery game or if the player fails to reach a certain threshold of winning in the primary lottery game (Walker '408, col. 3, l. 5-8). Walker '408 merely provides a backup lottery game for receiving a value payout that arises when all of the sets played are losers or below a threshold of winning. In that situation, the player may receive another value payout from a completely separate meta-game. This value payout is not based on winning a plurality of sets on a single play, but rather on losing a plurality of sets on a

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single play in a primary lottery game, and qualifying for a different value payout on a second play in a separate, supplemental meta-game.

Walker '408 teaches situations in which the value payout <u>specifically for the separate meta-game</u> is different than the sum of a plurality of individual payouts for winning each set individually <u>in the primary lottery game</u> (*see* Walker '408, col.9, l. 39-43; Fig. 3). However, Walker '408 fails to disclose a value payout for winning a plurality of sets <u>on a single play</u> that is different than the sum of a plurality of individual payouts for winning each set individually. As discussed above, Walker '408 discloses two distinct lottery games. Specifically, embodiments of Walker '408 "provide a system and method by which players participating in a primary lottery drawing <u>may elect to participate in a second, or derivative lottery drawing.</u>" (Walker 408, col. 2, l. 66 to col. 3. l. 2). In fact, to be eligible to play in the separate, supplement meta-game, a player must register separately for the meta-game (Walker '408, col. 3, l. 9-13). According to Walker '408, a player may win a value payout <u>in the separate meta-game</u> that is different than the value payout <u>in the primary lottery game</u>. However, to win this different value payout, a player must participate a second time in the second, supplemental meta-game. Thus, Walker '408 fails to teach a value payout for winning a plurality of sets <u>on a single play</u> that is different than the sum of a plurality of individual payouts for winning each set individually. For these reasons, Applicants respectfully assert that the combination of Powerball and Walker '408 fails to disclose each limitation recited in claim 35.

Moreover, Applicants respectfully assert that Walker '408 <u>teaches away</u> from a value payout for <u>winning a plurality of player sets on a single play</u> that is different than

the sum of a plurality of individual payouts for winning each set individually. As discussed above, Walker '408 teaches a value payout in a separate meta-game that is based on <u>losing</u> or <u>failing to reach a certain threshold of winning</u> a plurality of sets in the primary lottery game. In fact, the odds of the plurality of player sets qualifying for a value payout in the separate meta-game are inversely proportional to the odds of the plurality of player sets <u>winning</u> an award in the primary lottery game (*see* Walker '408, col. 8, l. 35-41). A prior art reference that discloses a game that requires <u>losing</u> multiple player sets in a primary lottery game in order to win a value payout in a separate, supplemental meta-game expressly <u>teaches away</u> from a gaming method that requires determining a value payout for <u>winning</u> a plurality of player sets <u>on a single play</u> that is different from the sum of value payouts for <u>winning</u> each player set individually.

Therefore, Applicants respectfully request withdrawal of the 35 U.S.C. 103(a) rejection of independent claim 35 based on the combination of Powerball and Walker '408. Inasmuch as claims 36-38 depend from independent claim 35 and include further limitations not recited in claim 35, Applicants respectfully assert that claims 36-38 are similarly patentable over the combination of Powerball and Walker '408.

4.   Claims 39-41 are patentable under 35 U.S.C. 103(a) over www.powerball.com (Powerball) in view of U.S. Patent 6,497,408 (Walker '408)

Applicants respectfully traverse the rejection of claims 39-41 under 35 U.S.C. 103(a) over Powerball in view of Walker '408 for at least the reason that Powerball does not disclose or teach each and every element of independent claim 39, and Walker '408 fails to cure such deficiencies. Specifically, independent claim 39 recites a method for playing a lottery game comprising determining plurality of sets of player symbols

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associated with a player for a <u>single play</u> of a game. The method requires determining a value payout based on respective numbers of <u>winning</u> symbols in respective sets of player symbols. The value payout for winning a plurality of sets on a single play <u>is different</u> than the sum of the individual payouts for winning each set individually.

As discussed above, Powerball teaches a value payout for winning a plurality of player sets on a single play that is <u>equal to</u> the sum of individual value payouts for winning each player set individually. To illustrate, consider the example in which a player purchases two entries in a game of Powerball consisting of Entry A and Entry B. Suppose Entry A consists of one match and the occurrence of a powerball. The payout for winning Entry A individually consists of $4 (see Powerball Table 1). Suppose Entry B consists of two matches and the occurrence of a powerball. The payout for winning Entry B consists of $7 (see Powerball Table 1). The total payout for winning both Entry A and Entry B (the plurality of player sets) in a single game would be $11, which is <u>equal to</u> the sum of winning Entry A and Entry B individually. Thus, Powerball fails to teach a method in which the payout for winning a plurality of player sets on a single play is different than the sum of individual payouts for winning each set individually.

Walker '408 fails to correct the deficiencies of Powerball. Walker '408 teaches a system and method for conducting and playing a separate, supplemental lottery game that allows the player to qualify for an award if the player <u>fails to win</u> in the primary lottery game or if the player <u>fails to reach a certain threshold of winning</u> in the primary lottery game (Walker '408, col. 3, l. 5-8). Walker '408 merely provides a backup lottery game for receiving a value payout that arises when all of the sets played are losers or below a threshold of winning. In that situation, the player may receive another value

payout from a <u>completely separate</u> meta-game. This value payout is not based on winning a plurality of sets <u>on a single play</u>, but rather on losing a plurality of sets on a single play in a primary lottery game, and qualifying for a different value payout on a second play in a separate, supplemental meta-game.

Walker '408 teaches situations in which the value payout <u>specifically for the separate meta-game</u> is different than the sum of a plurality of individual payouts for winning each set individually <u>in the primary lottery game</u> (*see* Walker '408, col.9, l. 39-43; Fig. 3). However, Walker '408 fails to disclose a value payout for winning a plurality of sets <u>on a single play</u> that is different than the sum of a plurality of individual payouts for winning each set individually. As discussed above, Walker '408 discloses two distinct lottery games. Specifically, embodiments of Walker '408 "provide a system and method by which players participating in a primary lottery drawing <u>may elect to participate in a second, or derivative lottery drawing</u>." (Walker 408, col. 2, l. 66 to col. 3. l. 2). In fact, to be eligible to play in the separate, supplement meta-game, a player must register separately for the meta-game (Walker '408, col. 3, l. 9-13). According to Walker '408, a player may win a value payout <u>in the separate meta-game</u> that is different than the value payout <u>in the primary lottery game</u>. However, to win this different value payout, a player must participate a second time in the second, supplemental meta-game. Thus, Walker '408 fails to teach a value payout for winning a plurality of sets <u>on a single play</u> that is different than the sum of a plurality of individual payouts for winning each set individually. For these reasons, Applicants respectfully assert that the combination of Powerball and Walker '408 fails to disclose each limitation recited in claim 39.

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Moreover, Applicants respectfully assert that Walker '408 <u>teaches away</u> from a value payout for <u>winning a plurality of player sets on a single play</u> that is different than the sum of a plurality of individual payouts for winning each set individually. As discussed above, Walker '408 teaches a value payout in a separate meta-game that is based on <u>losing</u> or <u>failing to reach a certain threshold of winning</u> a plurality of sets in the primary lottery game. In fact, the odds of the plurality of player sets qualifying for a value payout in the separate meta-game are inversely proportional to the odds of the plurality of player sets <u>winning</u> an award in the primary lottery game. (*see* Walker '408, col. 8, l. 35-41). A prior art reference that discloses a game that requires <u>losing</u> multiple player sets in a primary lottery game in order to win a value payout in a separate, supplemental meta-game expressly <u>teaches away</u> from a gaming method that requires determining a value payout for <u>winning</u> a plurality of player sets <u>on a single play</u> that is different from the sum of value payouts for <u>winning</u> each player set individually.

Therefore, Applicants respectfully request withdrawal of the 35 U.S.C. 103(a) rejection of independent claim 39 based on the combination of Powerball and Walker '408. Inasmuch as claims 40-41 depend from independent claim 39 and include further limitations not recited in claim 39, Applicants respectfully assert that claims 40-41 are similarly patentable over the combination of Powerball and Walker '408.

      5.   Claim 42 is patentable under 35 U.S.C. 103(a) over www.powerball.com (Powerball) in view of U.S. Patent 6,497,408 (Walker '408)

Applicants respectfully traverse the rejection of claim 42 under 35 U.S.C. 103(a) over Powerball in view of Walker '408 for at least the reason that Powerball does not disclose or teach each and every element of independent claim 42, and Walker '408

fails to cure such deficiencies. Specifically, independent claim 42 recites a gaming apparatus that includes a controller configured to determine a plurality of sets of player symbols associated with a player for a <u>single play</u> of a game. The controller is further configured to determine a value payout based on respective numbers of winning symbols in respective sets of player symbols. The value payout for winning a plurality of sets on a single play <u>is different</u> than the sum of the individual payouts for winning each set individually.

As discussed above, Powerball teaches a value payout for winning a plurality of player sets on a single play that is <u>equal to</u> the sum of individual value payouts for winning each player set individually. To illustrate, consider the example in which a player purchases two entries in a game of Powerball consisting of Entry A and Entry B. Suppose Entry A consists of one match and the occurrence of a powerball. The payout for winning Entry A individually consists of $4 (*see* Powerball Table 1). Suppose Entry B consists of two matches and the occurrence of a powerball. The payout for winning Entry B consists of $7 (*see* Powerball Table 1). The total payout for winning both Entry A and Entry B (the plurality of player sets) in a single game would be $11, which is <u>equal to</u> the sum of winning Entry A and Entry B individually. Thus, Powerball fails to teach a gaming apparatus configured to determine a value payout for winning a plurality of player sets on a single play that <u>is different</u> than the sum of individual payouts for winning each set individually.

Walker '408 fails to correct the deficiencies of Powerball. Walker '408 teaches a system and method for conducting and playing a separate, supplemental lottery game that allows the player to qualify for an award if the player <u>fails to win</u> in the primary

lottery game or if the player <u>fails to reach a certain threshold of winning</u> in the primary lottery game (Walker '408, col. 3, l. 5-8). Walker '408 merely provides a backup lottery game for receiving a value payout that arises when all of the sets played are losers or below a threshold of winning. In that situation, the player may receive another value payout from a <u>completely separate</u> meta-game. This value payout is not based on winning a plurality of sets <u>on a single play</u>, but rather on losing a plurality of sets on a single play in a primary lottery game, and qualifying for a different value payout on a second play in a separate, supplemental meta-game.

Walker '408 teaches situations in which the value payout <u>specifically for the separate meta-game</u> is different than the sum of a plurality of individual payouts for winning each set individually <u>in the primary lottery game</u> (*see* Walker '408, col.9, l. 39-43; Fig. 3). However, Walker '408 fails to disclose a value payout for winning a plurality of sets <u>on a single play</u> that is different than the sum of a plurality of individual payouts for winning each set individually. As discussed above, Walker '408 discloses two distinct lottery games. Specifically, embodiments of Walker '408 "provide a system and method by which players participating in a primary lottery drawing <u>may elect to participate in a second, or derivative lottery drawing</u>." (Walker 408, col. 2, l. 66 to col. 3. l. 2). In fact, to be eligible to play in the separate, supplement meta-game, a player must register separately for the meta-game (Walker '408, col. 3, l. 9-13). According to Walker '408, a player may win a value payout <u>in the separate meta-game</u> that is different than the value payout <u>in the primary lottery game</u>. However, to win this different value payout, a player must participate a second time in the second, supplemental meta-game. Thus, Walker '408 fails to teach a value payout for winning a

plurality of sets <u>on a single play</u> that is different than the sum of a plurality of individual payouts for winning each set individually. For these reasons, Applicants respectfully assert that the combination of Powerball and Walker '408 fails to disclose each limitation recited in claim 42.

Moreover, Applicants respectfully assert that Walker '408 <u>teaches away</u> from a value payout for <u>winning a plurality of player sets on a single play</u> that is different than the sum of a plurality of individual payouts for winning each set individually. As discussed above, Walker '408 teaches a value payout in a separate meta-game that is based on <u>losing</u> or <u>failing to reach a certain threshold of winning</u> a plurality of sets in the primary lottery game. In fact, the odds of the plurality of player sets qualifying for a value payout in the separate meta-game are inversely proportional to the odds of the plurality of player sets <u>winning</u> an award in the primary lottery game (*see* Walker '408, col. 8, l. 35-41). A prior art reference that discloses a game that requires <u>losing</u> multiple player sets in a primary lottery game in order to win a value payout in a separate, supplemental meta-game expressly <u>teaches away</u> from a gaming apparatus that is configured for determining a value payout for <u>winning</u> a plurality of player sets <u>on a single play</u> that is different from the sum of value payouts for <u>winning</u> each player set individually.

Therefore, Applicants respectfully request withdrawal of the 35 U.S.C. 103(a) rejection of independent claim 42 based on the combination of Powerball and Walker '408.

B.   Claims 13 and 17 are patentable under 35 U.S.C. 103(a) over www.powerball.com (Powerball) in view of U.S. Patent 6,497,408 (Walker '408), yet in further view of Frequently Asked Questions about Keno (FAQK).

Applicants respectfully traverse the rejection of claims 13 and 17 dependent from claim 1 under 35 U.S.C. 103(a) over Powerball in view of Walker '408 in further view of FAQK for at least the reason that the combination of Powerball and Walker '408 does not disclose or teach each and every element of independent claim 1, and FAQK fails to cure such deficiencies.

As discussed in Part A.1 of this Appeal Brief, the combination of Powerball and Walker ' 408 does not disclose or teach each and every element of independent claim 1. FAQK fails to cure such deficiencies. Specifically, FAQK does not teach a value payout for winning a plurality of player sets on a single play that is different than the sum of a plurality of payouts for winning each set individually. According to the Examiner, FAQK merely teaches the inclusion of various sized sets of player symbols (FAQK, pp. 1-2). Thus, FAQK fails to cure the deficiencies of the combination of Powerball and Walker '408.

Therefore, Applicants respectfully request withdrawal of the 35 U.S.C. 103(a) rejection of claims 13 and 17 based on the combination of Powerball, FAQK and Walker '408. The combination of Powerball, FAQK, and Walker '408 fail to teach each and every element of independent claim 1. Inasmuch as claims 13 and 17 depend from claim 1 and include further limitations not recited in claim 1, Applicants respectfully assert that claims 13 and 17 are similarly patentable over the combination of Powerball and Walker '408.

VIII. CLAIMS APPENDIX A

See attached listing of pending claims involved in this appeal.

IX. EVIDENCE APPENDIX B

Applicants do not rely on any evidence submitted pursuant to 37 CFR 1.130,

1.131, or 1.132 or any other evidence entered by the examiner in this appeal.

X. RELATED PROCEEDINGS APPENDIX C

Applicants are not aware of any decision rendered by a court of the Board in any

related appeals or interferences.

For at least the reasons discussed above, the Applicants respectfully submit that

the final rejection of claims 1-42 should be reversed and that the application be

remanded to the Examiner for allowance.

Respectfully submitted,

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APPENDIX A – PENDING CLAIMS

The following is a listing of the claims involved in this appeal:

1.   A gaming method, comprising:

receiving player symbol data indicative of a plurality of sets of player symbols associated with a player for a single play of a game, wherein each player symbol is selected from a plurality of possible symbols;

receiving an indication that the player submitted a wager associated with the plurality of sets of player symbols for a single play;

receiving winning symbol data indicative of a set of winning symbols from the plurality of possible symbols;

determining a value payout based on respective numbers of winning symbols in respective sets of player symbols, wherein for at least some value payouts the value payout for winning a plurality of sets on the single play is different than a sum of a plurality of individual value payouts for winning each set individually, each individual payout based on the respective number of winning symbols in the corresponding set of player symbols; and

transmitting player payout data indicative of the value payout.

2.   A gaming method according to claim 1, wherein determining the value payout comprises looking up the value payout in a multi-dimensional lookup table based on the respective numbers of winning symbols in each set of the plurality of sets of player symbols.

3.   A gaming method according to claim 1, wherein for at least a first subset of the at least some of the value payouts, the value payout is greater than the sum of the plurality of individual value payouts.

4.   A gaming method according to claim 3, wherein for a second subset of the at least some of the value payouts, the value payout is less than the sum of the plurality of individual value payouts.

5.   A gaming method according to claim 1, wherein determining the value payout further comprises determining a base payout based on the plurality of individual payouts.

6.   A gaming method according to claim 5, wherein determining the value payout further comprises:

if the base payout is greater than zero, determining the value payout as the base payout; and

if the base payout is zero, determining the value payout based on a sum of the respective numbers of winning symbols in the plurality of sets of player symbols.

7.   A gaming method according to claim 5, wherein determining the value payout further comprises:

determining a bonus payout based on a sum of the respective numbers of winning symbols in the plurality of sets of player symbols;

determining the value payout as the greater of the base payout and the bonus payout.

8.   A gaming method according to claim 5, wherein determining the value payout further comprises:

determining a bonus payout based on a sum of the respective numbers of winning symbols in the plurality of sets of player symbols;

determining the value payout as the sum of the base payout and the bonus payout.

9.   A gaming method according to claim 5, wherein determining the base payout comprises determining a maximum individual payout of the plurality of individual payouts.

10.   A gaming method according to claim 5, wherein determining the base payout comprises determining a sum of the plurality of individual payouts.

11.   A gaming method according to claim 1, wherein each set of the plurality of sets of player symbols includes the same number of symbols.

12.   A gaming method according to claim 11, wherein the set of winning symbols includes the same number of symbols as each set of the plurality of sets of player symbols.

13.   A gaming method according to claim 11, wherein the set of winning symbols includes a different number of symbols as each set of the plurality, of sets of player symbols.

14.   A gaming method according to claim 11, wherein the plurality of sets of player symbols includes at most a maximum number of sets of player symbols.

15.   A gaming method according to claim 14, wherein the maximum number of sets of player symbols is selected from the group of numbers consisting of 2, 3, 4, and 5.

16.   A gaming method according to claim 14, wherein the maximum number of sets of player symbols is greater than 5.

17.   A gaming method according to claim 1, wherein at least two sets of the plurality of sets of player symbols include different numbers of symbols.

18.   A gaming method according to claim 1, wherein the respective numbers of winning symbols in respective sets of player symbols reflect each occurrence of a winning symbol that occurs multiple times in the plurality, of sets of selected symbols.

19.   A lottery gaming method according to claim 1, wherein the respective numbers of winning symbols in respective sets of player symbols reflect only one occurrence of a winning symbol that occurs multiple times in the plurality of sets of selected symbols.

20.   A gaming method according to claim 1, wherein the symbols in the set of winning symbols are randomly selected.

21.   A gaining method according to claim 20, further comprising randomly selecting objects from a plurality of objects, wherein each object of the plurality of objects is associated with a respective one of the plurality of possible symbols, wherein the randomly selected objects correspond to the set of winning symbols.

22.   A gaining method according to claim 1, wherein the symbols in the set of winning symbols are pseudo-randomly selected.

23.   A gaming method according to claim 22, wherein pseudo-randomly selecting the set of winning symbols comprises pseudo randomly generating the set of winning symbols using a processor.

24.   A gaming method according to claim 1, wherein each symbol of the set of winning symbols is selected from the plurality of possible symbols.

25.   A gaming method according to claim 1, wherein at least some symbols of the set of winning symbols are selected from a subset of the plurality of possible symbols that excludes previously selected winning symbols.

26.   A gaming method according to claim 1, wherein symbols in at least one set of the plurality of sets of player symbols are chosen by the player.

27.   A gaming method according to claim 26, wherein symbols in one set of the plurality of sets of player symbols are chosen by the player; wherein symbols in the remaining sets of the plurality of sets of player symbols are pseudo-randomly generated.

28.   A gaming method according to claim 26, wherein symbols in all of the sets of the plurality of sets of player symbols are chosen by the player.

29.   A gaming method according to claim 1, wherein symbols in all of the sets of the plurality of sets of player symbols are pseudo-randomly generated.

30.   A gaming server, comprising:

a controller operatively coupled to a network, the controller comprising a microprocessor and a memory operatively coupled to the microprocessor, the controller configured to receive player symbol data via the network, the player symbol data indicative of a plurality of sets of player symbols associated with a player for a single

play of a game, wherein each player symbol is selected from a plurality of possible symbols;

the controller configured to receive, via the network, an indication that the player has submitted a wager for a plurality of sets of player symbols in a single play;

the controller configured to receive winning symbol data indicative of a set of winning symbols from the plurality of possible symbols;

the controller configured to determine a value payout based on respective numbers of winning symbols in respective sets of player symbols, wherein for at least some value payouts the value payout for winning a plurality of sets on the single play is different than a sum of a plurality of individual value payouts for winning each set individually, each individual payout based on the respective number of winning symbols in the corresponding set of player symbols; and

the controller configured to transmit, via the network, player payout data indicative of the value payout.

31.   A gaming server as defined in claim 30, wherein the controller is configured to receive the player selected symbol data from a lottery terminal operatively coupled to the network.

32.   A gaming server as defined in claim 30, wherein the controller is configured to receive the player symbol data from a personal computing device operatively coupled to the network.

33.   A gaming server as defined in claim 30, wherein the controller is configured to receive the indication that the player has submitted the wager from a lottery terminal operatively coupled to the network.

34.   A gaming server as defined in claim 30, wherein the controller is configured to receive the indication that the player has submitted the wager from a personal computing device operatively coupled to the network.

35.   A gaming method, comprising:

receiving a wager for a plurality of sets of player symbols in a single play of a game from a player;

determining a plurality of sets of player symbols associated with the player for a single a play, wherein each player symbol is selected from a plurality of possible symbols;

selecting a set of winning symbols from the plurality of possible symbols;

determining a value payout based on respective numbers of winning symbols in respective sets of player symbols, wherein for at least some value payouts the value payout for winning a plurality of sets on the single play is different than a sum of a plurality of individual value payouts for winning each set individually, each individual payout based on the respective number of winning symbols in the corresponding set of player symbols; and

providing the value payout, if any, to the player.

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36.   A gaming method as defined in claim 35, wherein determining the plurality of sets of player symbols comprises allowing the player to select symbols in at least one set of the plurality of sets of player symbols.

37.   A gaming method as defined in claim 36, wherein determining the plurality of sets of player symbols comprises:

allowing the player to select only set of the plurality of sets of player symbols; and

pseudo-randomly determining the remaining sets the plurality of sets of player symbols.

38.   A gaming method as defined in claim 35, wherein determining the plurality of sets of player symbols comprises allowing the player to select the symbols in the plurality of sets of player symbols.

39.   A gaming method, comprising:

receiving a wager from a player;

determining a plurality of sets of player symbols associated with the player in a single play of a game, wherein each player symbol is selected from a plurality of possible symbols;

determining a value payout based on respective numbers of winning symbols in respective sets of player symbols, wherein the winning symbols are from a set of winning symbols from the plurality of possible symbols, wherein for at least some value

payouts the value payout for winning a plurality of sets on the single play is different than a sum of a plurality of individual value payouts for winning each set individually, each individual payout based on the respective number of winning symbols in the corresponding set of player symbols; and

provfiding the value payout, if any, to the player.

40. A gaming method as defined in claim 39, further comprising selecting a set of winning symbols from the plurality of possible symbols.

41. A gaming method as defined in claim 39, further comprising receiving winning symbol data indicative of the set of winning symbols.

42. A gaming apparatus, comprising:

a value input device;

a controller operatively coupled to a network and to the value input device, the controller comprising a microprocessor and a memory operatively coupled to the microprocessor,

the controller configured to determine a wager for a plurality of sets of player symbols in a single play of a game has been received from a player via the value input device;

the controller configured to determine a plurality of sets of player symbols associated with the player for a single play, wherein each player symbol is selected from a plurality of possible symbols;

the controller configured to determine a value payout based on respective numbers of winning symbols in respective sets of player symbols, wherein the winning symbols are from a set of winning symbols from the plurality of possible symbols, wherein for at least some value payouts the value payout for winning a plurality of sets on the single play is different than a sum of a plurality of individual value payouts for winning each set individually, each individual payout based on the respective number of winning symbols in the corresponding set of player symbols; and

the controller configured to provide the value payout, if any, to the player.

APPENDIX B – EVIDENCE

None.

APPENDIX C - RELATED PROCEEDINGS

None.